

EXHIBIT B

Defendants.

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Plaintiffs have conceded that they satisfy the "duties" test for determining if an employee is exempt.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MARKET BEL, individually
and on behalf of all similarly situated
persons,

Plaintiff,

CIVIL ACTION NO.
1:06-CV-1993-CC

vs.

CALLAWAY PARTNERS, LLC

JURY TRIAL DEMANDED

Defendant.

JOINT STIPULATION

It is hereby stipulated and agreed that Plaintiff, current opt-in plaintiffs and future opt-in plaintiffs will not contend, claim, or argue in this case that they were non-exempt employees during their employment with Defendant based on the job duties they performed. This stipulation does not preclude any such individuals from contending in any other case that they were non-exempt employees during

"It is hereby stipulated and agreed that Plaintiff, current opt-in plaintiffs and future opt-in plaintiffs will not contend, claim or argue in this case that they were non-exempt employees . . . based on the job duties they performed."

[Doc. No. 115]

“Because the salary-basis test is a creature of the Secretary’s own regulations, his interpretation of it is, under our jurisprudence, controlling unless ‘plainly erroneous or inconsistent with the regulation.’”

Auer v. Robbins, 519 U.S. 452, 461 (1997)

"It is the Department's long standing position that where there is an understanding that the normal workweek consists of five or six workdays, the deduction permissible for a day of absence under section 541.118 [now 541.602(b)] must be calculated on the basis of one-fifth of a five-day workweek or one-sixth of a six-day workweek, whatever the case may be."

July 21, 1997, Opinion Letter

"[W]here there is an understanding that the normal workweek consists of five days, the deductions permissible under 541.118 [now 541.602(b)] must be calculated on the basis of one-fifth of a five-day workweek. The daily amount thus computed is applicable regardless of the number of hours the employee is scheduled to work."

January 17, 1986, Opinion Letter

29 C.F.R. 541.603(e)

This Section shall not be construed in an unduly technical manner so as to defeat the exemption.

Engagement Letter

Callaway
PARTNERS

Ms. Jeanne Banks
4959 Oakdale Rd.
Birmingham, GA 30060

August 23, 2004

Dear Jeanne:

Congratulating on your project associate assignment at Lockheed Martin, enclosed is a letter to the "Client" and welcome to Callaway Partners. We trust your experience will be rewarding and we look forward to a successful relationship now and throughout your professional career.

Callaway Partners has been engaged by our Client to perform various accounting services related to prior year financial statements. Our areas of focus include Accruals Payable, Prepaid Expenses, Cash, Accrued Expenses, Prepaid Assets, Allow. A/R, and Disposed Assets. Our activities will include going back four fiscal years in preparation of audit by PCA. The work will be performed on-site at the Client's corporate headquarters in Birmingham, Alabama and may expand into other areas as client needs evolve. You have been assigned as a project associate to complete this project with a title of Consultant. The Callaway engagement partner for this engagement is Joyce Orr. All major activities related to this project will be directed by Ms. Orr. Callaway Partners project lead. Your involvement will be the project will conclude on Wednesday, August 25, 2004 with a Targeted Completion Date of December 31, 2004 (subject to extension). Your weekly salary will be \$1600 per week, with hours worked in excess of forty for a given week paid at \$40/hour.

To outline Callaway Partners' policies, programs and benefits, we have enclosed the "Employee Handbook for Professional Project Employment". Please keep this Handbook as a ready reference throughout your employment with Callaway Partners. It's not your need, *sign the last page titled "Receipt of Employee Handbook" and fax this page to my attention at 770-730-0963 before commencing your project.*

Experienced commitment to a project because it demonstrates a commitment to client satisfaction, setting of expectations and a demonstrated level of professionalism. It is our desire to avoid your premature departure from this project without an initial expressed notification to the Client and Callaway Partners. As we discussed, it is your intent to continue this project through the Targeted Completion Date. We are confident that, if executed well, this project will open up new business opportunities for Callaway Partners which in turn will present additional project assignments for our associates. We have all the confidence in you and your abilities to deliver a quality service and project deliverable for Lockheed Martin. There are a number of people depending on you and your personal and professional commitment to this project and to have assistance from this engagement, active money other potential obstacles, because you recognize and have already acknowledged this commitment to everyone involved. In the event you do need to leave this project before completion, which we recognize may happen due to an unavoidable circumstance, please refer to the "Notice of Termination" section of the "Employee Handbook for Professional Project Employment" for Callaway Partners' official policy.

Your salary will be paid each Friday for the previous week. To facilitate accurate and timely client billings, we will invoice you billable time each Monday morning. A Usual Callaway project professional

7700 Daniel Pk Way, Suite 1660 Atlanta, Georgia 30338 770-730-0611 www.callawaypartners.com

CAL 0016221

Exhibit A to Erickson's Declaration [Exhibit 1 to Defendants' SUMF Doc. No. 339]

"Your weekly salary will be \$1600 per week, with hours worked in excess of forty for a given week paid at \$40/hour."

"To outline Callaway Partners' policies, programs and benefits, we have enclosed the 'Employee Handbook for Professional Project Employees.'"

"Your salary will be paid each Friday for the previous week. To facilitate accurate and timely client billings, we will capture you[r] billable time each Monday morning."

Callaway informed Plaintiffs at the beginning of their employment to notify management of any questions or problems they had with any matter:

"If there is anything about your engagement that is bothering you, let's get it out in the open and talk about it. Discuss it frankly with us, and we'll do everything we can to help you 'iron it out.' You can be sure that your complaint will be handled in an open and fair manner. . . .

We are anxious to hear from you on any subject. As a member of our team, we want you to have every opportunity to discuss your problems or ideas freely, and for you to feel that you are being treated fairly. . . .

[Exhibit C to Erickson's Declaration]

Callaway PARTNERS

(4) HEALTHSOUTH[®]
Financial Restatement
and Project Management
Engagement



Project Professional Compensation Overview

(H) HEALTHSOUTH.
Financial Restatement
and Project Management
Engagement

- Every employee assigned on the HealthSouth engagement is paid a guaranteed weekly salary.
- As an additional compensation element, Callaway has elected to also pay a weekly bonus to every employee.
- The calculation of this weekly bonus is based on billable hours worked on the Healthsouth engagement. Employees must be in good standing with the company to receive this bonus.
- Additional benefits are offered such as health insurance, 401k participation, PTO, and others based on guidelines in the handbook.



Project Professional Compensation Overview

(H) HEALTHSOUTH[®]
Financial Restatement
and Project Management
Engagement

Salary Guidelines

- For each week you are employed by Callaway, working on HealthSouth engagement, you are entitled to your full weekly salary, subject to a few exceptions, listed below.
 - “Days” not worked for personal reasons, unpaid vacation, or illness (can be offset by PTO days earned)
 - Unpaid disciplinary suspensions imposed for infractions of workplace conduct rules
 - In initial or terminal weeks of employment: Salary may be prorated for time actually worked in the first and last week of employment
 - Weeks where the project is shut down completely and no work is performed, salary will not be paid (example may be Christmas week or Thanksgiving week)
- PTO (paid time off) earned can be applied to days not worked but do not effect the weekly bonus calculation



Project Professional Compensation Overview

(H) HEALTHSOUTH[®]
Financial Restatement
and Project Management
Engagement

Bonus Guidelines

- For each week you are employed by Callaway, receiving a weekly salary while working on the HealthSouth engagement, you will earn a bonus for billable hours worked in excess of 40 hours. Employees must be in good standing to receive this bonus. (In certain circumstances, the 40 hours may be reduced/prorated if less than a full week is worked and less than a full week's salary is paid). Amount paid per bonus hour is typically equivalent to salary compensation levels, but this may vary based on performance.
- Any deficit created in a given week (where billable hours are less than 40), will be carried forward and applied against future week's bonus calculation. This calculation has no effect on an employee's guaranteed weekly salary.
- Any deficit existing at the end of employment will be forgiven.



**Project Professional
Compensation Overview**

(H) HEALTHSOUTH[®]
Financial Restatement
and Project Management
Engagement

Bonus Example #3

A project professional takes 2 personal days and works 3 days, is paid 3/5 of their weekly salary, and reports 35 billable hours. This project professional's normal weekly salary is \$1,000, \$600 paid for this week after \$400 deduction for 2 full day absences for personal reasons. He/she is in good standing with Callaway. There is no "bonus hour deficit" from the previous week.

Billable Hours	→	35	
Weekly Billable Hour			
Bonus Threshold		(24)	Prorated (3/5 x 40 = 24)
Bonus Hours Earned		<u>11</u>	
Deficit from previous week		(0)	
Weekly Bonus Hours		<u>11</u>	
X effective hourly rate		<u>\$25.00</u>	
Weekly Bonus Amount			\$275.00

Weeks Where Plaintiffs Received Full Pro-Rata Salary Despite Partial Weekdays

#	Name	Salary Rate	Workweek	Days M-F	Hrs Reported For Billing	Regular Pay Received
1	Angela Beavers	\$1,600/wk	4/1/05	5	35.5	\$1,600 (5/5 of regular salary)
2	Tim Hord	\$1,600/wk	12/23/05	5	37.25	\$1,600 (5/5 of regular salary)
3	Tim Hord	\$1,600/wk	3/10/06	5	32.75	\$1,600 (5/5 of regular salary)
4	Julie McMillan	\$1,600/wk	4/7/06	5	34.75	\$1,600 (5/5 of regular salary)
5	Peter Montgomery	\$1,600/wk	3/10/06	5	37	\$1,600 (5/5 of regular salary)
6	Sandra Morman	\$1,800/wk	3/10/06	5	35	\$1,800 (5/5 of regular salary)
7	Michael Moss	\$1,600/wk	10/13/06	5	38.5	\$1,600 (5/5 of regular salary)
8	Michael Moss	\$1,600/wk	10/6/06	5	37.5	\$1,600 (5/5 of regular salary)
9	Michael Moss	\$1,600/wk	4/28/06	5	35	\$1,600 (5/5 of regular salary)
10	Pamela O. Nunez	\$1,600/wk	12/16/05	5	34	\$1,600 (5/5 of regular salary)
11	Pamela O. Nunez	\$1,600/wk	11/4/05	5	29.5	\$1,600 (5/5 of regular salary)
12	Louis Smeraglia	\$1,600/wk	4/29/05	5	37	\$1,600 (5/5 of regular salary)
13	Toni S. Mosely	\$1,800/wk	11/19/04	5	38	\$1,800 (5/5 of regular salary)
14	Cherri Walker	\$1,600/wk	12/29/06	5	35	\$1,600 (5/5 of regular salary)
15	Lillian O. Yeager	\$1,600/wk	4/8/05	5	38.5	\$1,600 (5/5 of regular salary)
16	Lillian O. Yeager	\$1,600/wk	3/4/05	5	37	\$1,600 (5/5 of regular salary)
17	Lillian O. Yeager	\$1,600/wk	10/22/05	5	36	\$1,600 (5/5 of regular salary)

[Exhibit D to Erickson Declaration]